

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:16-cv-20068

v.

Honorable Thomas L. Ludington
United States District Judge

DANIEL LUIS FACUNDO,

Defendant.

Honorable Patricia T. Morris
United States Magistrate Judge

/

OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR CLEMENCY

In October 2018, Defendant Daniel Luis Facundo pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). ECF Nos. 24; 26 at PageID.96, 30; 32 at PageID.143. Four months later, this Court sentenced Defendant to 120 months' imprisonment, to be followed by two years of supervised release. ECF No. 32 at PageID.144–45.

On November 28, 2023, Defendant—confined at FCI Elkton in Lisbon, Ohio—filed a *pro se* motion which reads, in its entirety:

I, Daniel Luis Facundo . . . respectfully ask the court to accept this as a [pro se] motion for the possession of marijuana clemency President Joe Biden signed into effect March 29, 2023 so it can be removed from my criminal history. I have a possession of marijuana charge from 11-01-2011. This charge gave me 2 criminal history points. I respectfully ask the court for the clemency for possession of marijuana or to appoint counsel if necessary to assist me with this filing.

ECF No. 49 at PageID.260.

The authority for Defendant's request is unclear. True, President Biden issued two proclamations, in October 2022 and December 2023, which granted "full, unconditional, and categorical" pardons for certain prior *federal* and *District of Columbia* offenses including simple possession of marijuana, attempted possession of marijuana, and marijuana use. *See Proclamation*

No. 10467, 87 Fed. Reg. 196 (Oct. 6, 2022); Proclamation No. 10688, 88 Fed. Reg. 248 (Dec. 22, 2023). But neither proclamation pardoned *state* marijuana convictions, like Defendant's 2011 conviction for possession of marijuana in the 10th Circuit Court for the County of Saginaw, Michigan. *See PSR ¶ 52; Presidential Proclamation on Marijuana Possession, Attempted Possession, and Use, U.S. DEP'T OF JUST., OFF. OF THE PARDON ATT'Y,* <https://www.justice.gov/pardon/presidential-proclamation-marijuana-possession#:~:text=On%20October%206%2C%202022%2C%20President%20Biden%20announced%20a%20full%2C,of%20simple%20possession%20of%20marijuana>. (May 20, 2024) ("Both the October 2022 and December 2023 proclamations apply only to federal offenses, including violations of the U.S. Code, the D.C. Code, and the Code of Federal Regulations.") [<https://perma.cc/RM5X-X559>].

And, even if Defendant was "pardoned" for his 2011 state marijuana conviction under these proclamations, his conviction would not be *expunged*. *Id.* (noting that the presidential pardons do "not signify innocence or expunge the conviction"). Thus, Defendant's conviction was properly considered when calculating his criminal history for sentencing purposes in 2018. U.S. SENT'G GUIDELINES MANUAL § 4A1.2 cmt. n. 10 (U.S. SENT'G COMM'N 2022) (noting pardoned convictions "are to be counted" in criminal history computations unless the pardon signifies innocence or the conviction is expunged); *see also United States v. Shazier*, 179 F.3d 1317, 1319 (11th Cir. 1999); *United States v. Bays*, 589 F.3d 1035, 1037 (9th Cir. 2009); *United States v. Martinez-Cortez*, 354 F.3d 830, 832 (8th Cir. 2004); *United States v. Hines*, 133 F.3d 1360, 1367 (10th Cir. 1998); *United States v. Gajdik*, 292 F.3d 555, 560 (7th Cir. 2002).

Accordingly, it is **ORDERED** that Defendant's Motion for Clemency, ECF No. 49, is **DENIED**.

Dated: June 12, 2024

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge